

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**VINCENT GILBERT, and
CLARA GILBERT,**

Plaintiff,

V.

No.

**NATIONWIDE INSURANCE COMPANIES,
and KRISTY STEWART,**

Defendants.

**NOTICE OF REMOVAL OF A CIVIL ACTION BY DEFENDANTS, NATIONWIDE
MUTUAL FIRE INSURANCE COMPANY AND KRISTY STEWART**

The defendants, Nationwide Mutual Fire Insurance Company, incorrectly named in the Complaint as Nationwide Insurance Companies (hereinafter “Nationwide”), and Kristy Stewart (hereinafter “Stewart”), by and through counsel, pursuant to 28 U.S.C. § 1446, give notice of removal of this action from the Circuit Court of Shelby County, Tennessee, to the United States District Court for the Western District of Tennessee, and allege as follows:

1. On August 20, 2008, the plaintiffs filed suit in the Circuit Court for Shelby County, Tennessee, incorrectly naming Nationwide Mutual Fire Insurance Company as Nationwide Insurance Companies, and also naming as a defendant, Kristy Stewart, an employee of Nationwide Mutual Fire Insurance Company. A copy of the suit filed by the plaintiffs in the Circuit Court of Shelby County, Tennessee, under Docket Number CT-004097-08, is attached as Exhibit 1.

2. On September 11, 2008, Kristy Stewart was served with a Summons and Complaint by way of personal service of process.

3. Nationwide Mutual Fire Insurance Company, as of the date of the filing of this Notice of Removal, has not yet been formally served with the Complaint, but is aware of the initiation of this action against it and therefore waives service of process by virtue of its appearance in this action.

4. No further proceedings have been had in the Circuit Court of Shelby County, Tennessee.

5. The entire amount of controversy exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand Dollars (\$75,000.00).

6. Nationwide and Stewart aver that plaintiffs have fraudulently joined Stewart in this action in an effort to defeat diversity jurisdiction in this Court in that at all times concerning this matter Stewart was acting in her capacity as an employee for Nationwide Mutual Fire Insurance Company. Defendants aver Stewart cannot be liable as a matter of law to the plaintiffs. Defendants aver plaintiffs have stated no separate cause of action against Stewart. Except for the fraudulent joinder of Stewart to this action, this action only involves citizens and residents of different states. At the time of the commencement of this action in the Circuit Court of Shelby County, Tennessee, and since that time, the plaintiffs were and still are residents of Tennessee. Defendant, Nationwide Mutual Fire Insurance Company, was and still is, a corporation incorporated and organized in a state other than Tennessee, with its principal place of business in a state other than the State of Tennessee.

7. This Court has original jurisdiction over the above-styled action, pursuant to the provisions of 28 U.S.C. § 1332 (a) and (c) and because the defendant, Nationwide, is not a citizen or resident of the State of Tennessee, because defendant, Stewart, was fraudulently joined as a defendant by plaintiffs in an effort to defeat the jurisdiction of this Court, and because the amount in controversy exceeds \$75,000.00 exclusive of interests and costs. Therefore this removal is proper, pursuant to 29 U.S.C. § 1441 (a).

WHEREFORE, Nationwide and Stewart give notice of removal of this action from the Circuit Court of Shelby County, Tennessee, to the United States District Court for the Western District of Tennessee.

Respectfully submitted,

s/Gary A. Brewer

GARY A. BREWER

Registration No. 4678

Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2008, a copy of the foregoing **NOTICE OF REMOVAL OF A CIVIL ACTION BY DEFENDANTS, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY AND KRISTY STEWART** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

John Keith Perry, Jr., Esquire
7215 Getwell Road, Suite 201
Southaven, MS 38671

s/Gary A. Brewer

GARY A. BREWER

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